HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Description of the case
W.P. No. 1332/03 (M/S)
Dr. Devendra Singh
Vs.
First A.D.J. and anothers.

Approved for reporting.

Not Approved for reporting

Date of Decision: 02.08.2006

Initial of Judge:

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION NO. 1332 (MS) OF 2003

Dr. Devendra Singh,
S/o Sri Chandan Singh,
R/o House No. 849, Ward No. 10,
Prem Nagar, Doiwala,
Dehradun. .....Petitioner.

Vs.

1. Prescribed authority/First Additional Civil Judge (S.D.), Dehradun.
2. A.D.J./F.T.C. 3rd Dehradun.
3. Gurucharan Singh,
4. Soban Singh,
5. Shamsher Singh,

All respondents no.3 to 5 S/o Hajara Singh, R/o Village Chandmari, Doiwala, District-Dehradun. .....Respondents.

Dated 02.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma, counsel for the petitioner and Sri Ramji Srivastava, counsel for the respondents.

Factual Matrix of the Case

2. By the present writ petition, the petitioner has prayed for quashing the orders passed by the Prescribed Authority as well as the appellate Authority by which the release application has been allowed.

3. Briefly stated, respondents no. 3, 4 and 5 have filed an application under section 21(1)(a) of the U.P. Act No. 13 of 1972 praying for the release of the accommodation situate at 849, Ward N. 10, Prem Nagar Doiwala, District-Dehradun consisting of two rooms of 12X12 feet and one room area 10X10 feet apart from Kitchen, Varanda and court-yard. The defendant is a tenant at the rate of RS. 120/- per month apart from taxes, which are payable by the petitioners.

About Bonafide Need

4. The respondents no. 3, 4 and 5 in their release application has stated that on 21st November, 1995, the notice was sent to the petitioner, which was duly received on 27.11.1995 for the bonafide requirement of landlord/respondents but despite notice he has not vacated the premises. In paragraph 5 of the release application, it has been stated that at present the respondents/landlords are residing in four rooms at Doiwala and the family is increasing day by day and there are daughters and grand-daughters in the family and they have to be accommodated, but due to paucity of accommodation, it is not possible for the respondents to accommodate the family members in four-room accommodation. The children have to go to the school daily on foot which is about five kilometers away and the entire education of the children is suffering. The averments to that effect have been made in paragraph 6 and 7 of the 1, 2 Ka Kha of the application. The same are quoted below:

> "6. यह कि प्रार्थीगण का परिवार पढ़ा लिखा है तथा उनकी सन्तानें भी स्थान डोईवाला में स्कूल कालेज इत्यादि में पढ़ रहीं हैं जिन्हें कालेज जाने के लिये प्रतिदिन पांच किलोमीटर पैदल चलकर जाना पड़ता है। प्रार्थीगण को डोईवाला में अपनी सन्तानों की शिक्षा–दीक्षा है डोईवाला में आवासीय सम्पत्ति की अत्यन्त तीव्र मूल ताकि सद्भावी आवश्यकता है, इसके अतिरिक्त प्रार्थीगण के परिवार के कुछ सदस्य नौकरी आदि पर भी कार्यरत हैं जिन्हें प्रतिदिन चांदमारी ग्राम से डोईवाला शहर जाना पड़ता है, उनके लिये भी डोईवाला में आवासीय सम्पत्ति की तुरन्त मूल और सद्भावी आवश्यकता है।
>
> 7. यह कि संक्षेप में प्रार्थीगण के परिवार का विवरण निम्न प्रकार है:–

(1) प्रार्थी सं0 1 गुरूचरण सिंह के परिवार में व स्वयं उनकी पत्नी मनजीत कौर, ज्येष्ठ पुत्र हरविन्दर सिंह उम्र 22 वर्ष जो पब्लिक इण्टर कालेज डोईवाला में 12 वी कक्षा में अध्ययनरत है व कनिष्ठ पुत्र गुरजीतपाल उम्र 17 वर्ष है तथा वह भी 12 वीं कक्षा में उसी कालेज में अध्ययनरत है। इस कारण प्रार्थी सं0 1 को अपने पुत्रों के लिये अलग अलग अध्ययनकक्ष व अपने तथा अपनी पत्नी के लिये अलग शयनकक्ष तथा बैठक ड्राइंगरूम आदि की आवश्यकता है तथा रसोई की आवश्यकता भी है।

(2) यह कि प्रार्थी सं0 2 सोहन सिंह के परिवार में वह स्वयं तथा उनकी पत्नी निरंजन कौर व दो पुत्र तथा तीन पुत्री निम्न प्रकार हैः—

(क) ज्येष्ठ पुत्र भविन्दर सिंह, उनकी पत्नी प्रितम कौर व एक पुत्र जसविन्दर सिंह जो कि डोईवाला शहर में अध्ययनरत है तथा एक पुत्री गुरूप्रीत कौर जो कि डोईवाला शहर में पढ़ती है व एक अन्य पुत्री ज्योति है। जसविन्दर सिंह व गुरूप्रीत कौर के लिये अलग—अलग अध्ययन कक्ष तथा अलग—2 शयनकक्ष की आवश्यकता है तथा भविन्दर सिंह व उसका पत्नी प्रितम कौर के लिये अलग शयन कक्ष की आवश्यकता है। व इनके लिये ड्राइंगरूम (बैठक) व रसोई की भी आवश्यकता है।

(ख) प्रार्थी सं0 2 का कनिष्ठ पुत्र परमजीत सिंह व उसकी पत्नी राजेन्द्र कौर के परिवार में एक पुत्री रमनदीप कौर व पुत्र सिमरनप्रीत सिंह है। परमजीत सिंह व उनकी पत्नी के लिये अलग शयनकक्ष की तथा बच्चों के लिये अलग शयनकक्ष व अध्ययनकक्ष की आवश्यकता है। इसके अतिरिक्त प्रार्थी सं0 2 की एक पुत्री अमरजीत कौर व एक पुत्री गुरविन्दर कौर व एक पुत्री हरविन्दर कौर है। जो कि शादीशुदा है। तथा जिनके पुत्र पुत्री आदि हैं वे सब भी प्रार्थी सं0 2 के साथ निवास करने के लिये अपने ससुराल में आती रहती हैं, उस समय प्रार्थीगण को आवासीय सम्पत्ति की अत्यधिक कमी व परेशानी का सामना करना पड़ता है।

(3) प्रार्थी सं0 3 शमशेर सिंह जो कि इस समय दिल्ली में सरकारी नौकरी पर कार्यरत हैं और वर्तमान में दिल्ली में

सरकारी आवास में निर्वासित है। एक साल बाद सेवा निवृत होकर अपने पूरे परिवार जिसमें की वह स्वयं व उनकी पत्नि प्रितम कौर व एक पुत्र प्रदीप सिंह व उसकी पत्नि (प्रार्थी सं0 3 की पुत्रवधू) तथा प्रार्थी सं0 3 का छोटा पुत्र जसपाल सिंह व उसकी पत्नि व एक पुत्री उम्र 3 साल सहित वह प्रार्थीगण के साथ निवास करने के लिये स्थायी रूप से आने वाले हैं। इस कारण प्रार्थी सं0 3 को अपने परिवार के लिये बैठक शयनकक्ष, व उनके पुत्र, पुत्रवधू को अलग–2 शयन कक्ष आदि की आवश्यकता है।"

5. As will appear from the aforesaid averments mentioned in the application filed under Section 21(1)(a) of the U.P. Act No. 13 of 1972, the family of Gurcharan Singh consists of (a) self (b) wife Manjeet Kaur, (c) elder son Harvinder Singh, aged about 22 years studying in Class-12 at Public Inter College, Doiwala, at the time of the filing of the application (d) younger son Gurjeet Pal, aged about 17 years studying in Class 12 in the same college at the time of filing of the application. So far as Sohan Singh is concerned, his family consists of (a) self, (b) his wife Niranjan Kaur and two sons Bhavinder Singh & Paramjeet Singh.

6. The family of Bhavinder Singh consists of his wife Preetam Kaur, son Jasvinder Singh Studying at Doiwala City, daughter Gurpreet Kaur studying at Doiwala City.

7. The family of Paramjeet Singh consists of self, his wife Rajendra Kaur, son Simranpreet Singh and daughter Ramandeep. Paramjeet Singh has three daughters namely Amarjeet Kaur, Gurvinder Kaur and Harvinder Kaur, who are married and they have children. Number of times they come to visit Paramjeet's House.

8. As will appear from the aforesaid facts and circumstances, there are total 26 family members and the accommodation of four-rooms is hardly sufficient. The said averment has been made in paragraph 8 of the release application. The same is quoted below:

> "यह कि इस प्रकार प्रार्थीगण के परिवार में इस समय कुल 26 सदस्य हैं वर्तमान आवासीय सम्पत्ति इनके समस्त परिवार के सदस्यों के लिए अत्यधिक कम है और वह अपनी चॉदमारी गॉव की सम्पत्ति में अत्यधिक कठिनाई व परेशानी से रह रहे हैं। प्रार्थीगण का परिवार तेजी से बढ़ता जा रहा है और उनकी सन्तानों की सन्ताने भी व्यस्क होती जा रही हैं। इसलिये प्रार्थीगण को वादग्रस्त सम्पत्ति की अत्यन्त तीव्र सद्भावी व मूल आवश्यकता है।"

9. The petitioner has filed a written statement, where in paragraph 25 of the application, the petitioner has admitted that each of the respondents no. 3, 4 and 5 have a growing family. In paragraph 27 of the written statement, it has been stated that the respondents have agricultural land.

10. A counter affidavit has been filed in the writ petition, where it has been stated that the petitioner is not paying the rent and in paragraph 2 it has been stated that they are residing in the village Doiwala in a four-room accommodation, however, there are 26 members in the family and therefore, apart from bonafide need, hardship also goes in favour of the landlord-respondent.

11. The prescribed Authority after considering the entire material evidence available on the record has recorded a finding that there are four-room accommodation available with the landlord-respondent. The finding to that effect is quoted below:

जहॉ तक प्रार्थीगण की वर्तमान उपलब्ध आवासीय सम्पत्ति का प्रश्न है, प्रार्थीगण ने यह कहा कि उनके पास ग्राम चॉदमारी में केवल 4 आवासीय कमरे हैं जब कि विपक्षी ने अपने प्रतिवाद पत्र 21/क के पैरा–27 में कहा है कि उनके आवास में 14 पक्के कमरे, 6 कच्चे कमरे व अन्य बाथरूम आदि है। न्यायालय ने पक्षकारान व उनके विद्वान अधिवक्तागण की उपस्थिति में विवादित सम्पत्ति का स्थानीय निरीक्षण किया जो पत्रावली पर 101/क है। न्यायालय ने मौके पर यह पाया कि प्रार्थीगण की वर्तमान में रिहायशी सम्पत्ति में 4 कमरे, 2 कीचन, आगे बरामदा व आंगन है। आंगन के बाद पशु बांधने की जगह है जहॉ एक कीचन व उसके पीछे स्टोर है। इसके अलावा 2 कमरे सीढ़ी के बराबर में बने है। किन्तु उनके दरवाजे व फिटिंग नहीं थी। स्पष्ट है कि विपक्षी का केस प्रथम दृष्टया गलत है कि प्रार्थीगण के पास रिहायशी हेतु 14 पक्के कमरे उपलब्ध हैं। विपक्षी द्वारा मेरा ध्यान इस ओर भी आकृष्ट कराया गया है कि 100–150 फीट पर जो नयी तामीरात बन रही है वह प्रार्थीगण की है। जिसके एक कमरे की दीवार पूरी व एक कमरे की आधी उठ चुकी है। यद्यपि प्रार्थी ने उक्त तामीरात को अपनी होने से इन्कार किया किन्तु मैं पाता हूँ कि यदि यह नई उठती तामीरात प्रार्थी की मानी भी जाये तो भी उससे उसकी सद्भावपूर्ण आवश्यकता साबित होती है कि उसके वर्तमान रिहायशी सम्पत्ति में इतनी जगह नहीं है कि सभी सदस्य रह पाये, अतः व अतिरिक्त व्यवस्था करने पर मजबूर है।

12. So far as the comparative hardship is concerned, the same was also decided in favour of the respondent-landlord to the following effect:

> जहाँ तक तुलनात्मक कठिनाई का प्रश्न है विपक्षी का कथन है यद्यपि वह डाक्टर है किन्तु कस्बा होने के कारण उसकी आमदनी 10–12 हजार रूपये महिना नहीं है और उसके परिवार में 2 पुत्र एवं 2 पुत्रियां हैं और वह वर्तमान में किरायेदारों को देखते हुए वैकल्पिक व्यवस्था करने में असमर्थ है तथा प्रार्थी के इस कथन में बल नहीं है कि उसके बच्चों को 5 किलोमीटर चलना पड़ता हो इस लिये उसकी

आवश्यकता अधिक हो। न्यायालय ने स्थानीय निरीक्षण टिप्पणी में यह पाया कि स्कूल की दूरी 5 किलोमीटर ने होकर लगभग 1.3 किलोमीटर थी किन्तु मैं पाता हूँ कि यह साबित है कि परिवार के सदस्यों की संख्या को देखते हुए प्रार्थीगण को विवादित सम्पत्ति की सद्भावनापूर्ण आवश्यकता है अतः विपक्षी का केवल यह कथन कि वह वैकल्पिक व्यवस्था इस लिये नहीं कर सकता, चूंकि किराया अधिक है निराधार है। विपक्षी एक दांतो का डाक्टर है और निश्चित ही वह वैकल्पिक व्यवस्था कर सकता है। इसके अतिरिक्त नियुक्ति प्रार्थना पत्र इस आधार पर खारिज नहीं हो सकता कि जब कि प्राथीगण की सद्भावनापूर्ण आवश्यकता हो किन्तु चूंकि विपक्षी को बढ़ा हुआ किराया देना पड़ेगा अतः उसकी तुलनात्मक कठिनाई अधिक मान ली जाये।

13. The petitioner-tenant went in appeal and the appellate Court has also considered the evidence available on the record and has observed as under:

"शेष प्रत्यर्थीगण गुरचरण सिंह व सोहन सिंह स्वीकृत रूप से अपनी पत्नियों सहित गांव चांदमारी में ही रह रहे हैं और प्रत्यर्थी सं0 1 गुरचरण सिंह के अनुसार उनका एक पुत्र हरविन्दर सिंह जो प्रारम्भ में डोईवाला में कक्षा 12 में पढ़ता था, अब डोईवाला में कम्प्यूटर का व्यवसाय कर रहा है और उसकी शादी हो गई है तथा अपने दूसरे पुत्र गुरजीत पाल के बारे में प्रत्यर्थी सं0 1 ने लिखा है कि वह देहरादून में पढ़ रहा है और नित्य गांव चांदमारी से ही आता है ऐसा अपने शपथपत्र में गुरचरण सिंह ने लिखा है। अपनी आपत्ति 21 ए में अपीलांट ने ही यह लिखा है कि गुरचरण सिंह का एक पुत्र देहरादून में कम्प्यूटर कोर्स कर रहा है यह बाते एक दूसरे से समुचित होती हुई हैं कम्प्यूटर कोर्स करने के बाद यह पुत्र हरविन्दर सिंह डोईवाला में कम्प्यूटर व्यवसाय कर रहह है और गुरचरण सिंह के अनुसार उसका विवाह भी हो चुका है यह गांव चांदमारी से ही नित्य प्रति आता है। इस तरह से प्रत्यर्थी सं0 1 गुरचरण सिंह के पारिवारिक जनों

हेतु ही पृथक रूप से 3 कमरों की आवश्यकता सीपित हुई है।"

14. So far as the comparative hardship is concerned, appellate Court has also considered the requirement of respondents no. 3, 4 and 5 separately and has come to the conclusion that four- room accommodation is hardly sufficient for the requirement of the respondents. The comparative hardship was also decided in favour of the landlord-respondents. Relevant portion of the appellate Court's order is quoted below:

"जहां तक तुलनात्मक कठिनाई का प्रश्न है, स्वीकृत रूप से अपीलांट एक चिकित्क है इस ने अपनी दुकान भी कय की ली है उसके पास साधन है वह वैकल्पिक परिसर तलाश कर सकता था लेकिन उसके द्वारा ऐसा प्रया किया गया यह दर्शित तक नहीं किया गया है और फिर यदि मकानदार को सम्पत्ति नियुक्ति का प्रार्थनापत्र निरस्त नहीं किया जा सकता कि किरायेदार को अन्य परिसर अधिकर बढ़े हुए किराये पर मिलेगा। प्रत्यर्थी सं0 1 व 2 की आवश्यकता को देखते हुए तुलनात्मक कठिनाई का बिन्दू उन्हीं के पक्ष में अधिक है और इस बारे में भी जो निष्कर्ष विद्धान अवर न्यायालय ने व्यक्त किया है वह विधि व साक्ष्य के अनुरूप ही है।

15. The findings recorded by both the courts below regarding bonafide requirement and the comparative hardships, being findings of fact inasmuch as admittedly there are three co-owners and each of the family have grown up sons, daughters, grand-daughters and grand sons. At least they require some house so that they may assemble themselves jointly. The landlord has stated that they have 26 members in the family and four-room accommodation in the Village is hardly sufficient in order to accommodate the growing family

members. A general notice of fact can be taken that grown up children require the accommodation in the city in order to establish themselves. The finding on bonafide need, therefore, require no interference. Comparative hardship also lies in favour of the respondents-landlord. No interference is required under Article 226 of the Constitution of India.

Relevant Case-law on Bonafide Need

16. In the case of ***Ragavendra Kumar v. Firm Prem Machinery & Co. (2000) 1Supreme Court Cases 67***, it has been held: -

> "It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. [See-Prativa Devi (Smt.) v. T.V. Krishnan] In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

17. Following the decision of ***Bega Begum (supra),*** in the case of ***Joginder Pal vs. Naval Kishore Behal, 2002 SC & FB, Rent Cases, 388***, the Apex Court has held as under:-

> "5. In Malpe Vishwanath Acharya and Ors. V. State of Maharastra and Anr. (1998) 2 SCC 1) this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same

time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also in constitutional invalidity.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in Bega Begum v. Abdul Ahad Khan 1979 A.I.R. SC page 272. Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta[8] the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the relalities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords – both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble."

18. The Apex Court in ***G.C. Kapoor v. Nand Kumar Bhasin, 2001 (2) Allahabad Rent Cases Page No. 603*** has relied upon the judgment of Datta Laxman as well as Reghunath Pale and has come to the conclusion as under:-

"It is settled position of law that bona fide requirement means the requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattaraya Laxman Kamble v. Abdul Rasul Moulali Kokunde and Another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for

'presuming that his need is not bona fide'. It was also held that while deciding this question, court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt."

19. It has been observed by the Apex Court in ***Gaya Prasad v. Pradeep Srivastava AIR 2001 SC 803*** as under:-

"15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the list to creep through the line for long long years form the start to the ultimate termini, is a malady afflicating the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the list. If the cause of action is to be submerged in such subsequent events on account of the malady of the system. It shatters the confidence of the litigant, despite the impairment already caused.

We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Courts to evolve some concrete scheme for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Court after passing the initial orders, keeping the operative apart of decrees in abeyance. It is worth considering whether a cell can be set up in each of such High Courts where the piles of backlog are a stirring problem, to pick out such cases to be brought to the notice of the Chief Justice of the High Court concerned so that he could take appropriate steps in the matter."

20. In ***Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by L.Rs. and others 1997(1) ARC 627,*** the Apex Court has observed as under:

> “Having given an anxious consideration to the contention raised by the learned Counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warrant interference by this Court under Article 136 of thue Constitution. Under the act, the order of the Appellate Authority is final and the said order is a decree of the Civil Court and decree of a Competent Court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under articles 226 and 227 of the Constitution by taking into account any subsequent even which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the Appellate authority, in eye of law, must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court, the bonafide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son.”

Comparative Hardship

21. So far as the comparative hardship is concerned, the petitioner-tenant has failed to show that has made any efforts to search out any accommodation. Both the courts below having recorded the finding of fact, no interference under Article 227 of the Constitution of India can be made.

22. Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of ***Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301.*** After relying upon the judgment of ***Rajendra Kumar Gupta Vs. Gopal Krishan and other, A.I.R. 1995 Allahabad 82,*** it has been held that

suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

> "A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and Others, AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fact of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."

23. Further there being no material on record to indicate that the petitioner has made any efforts to search out

the accommodation during the pendency of the case, this factor also goes against the petitioner.

24. In the case of ***Bhagwan Das v. Smt. Jiley Kaur and others reported in 1991 (1) A.R.C. Page 377,*** the Apex Court has held as under:-

> "Thirdly, it was a case where was even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get. In Mst. Bega Begum v. Abdul Ahad Khan, (1979) 1 SCC 273; 1986 SCFBRC 346 (SC), it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

25. In view of the above, the comparative hardship lies in favour of the landlords.

Findings of Fact

26. In ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,*** the Apex Court has held as under:-

> "Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner

not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

"Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

"A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

"The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and

indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

27. Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675,*** the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held as under:-

"As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in **Surya Dev Rai** that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."

28. In the case of ***M/s India Pipe Fitting Co. V. Fakruddin M.A. Baker and another reported in 1978 A.I.R. (S.C.) Page 45,*** the Apex Court has held as under:-

"The limitation of the High Court while exercising power under Art. 227 of the Constitution is well settled. Power under Art. 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however, erroneous those may be. It is well settled and perhaps too late in the day to refer to the decisions of the Constitution Bench of this Court in **Waryam Singh v. Amarnath 1954 SCR 565** ; (**AIR 1954 SC 215**) where the principles have been clearly laid down as follows:- (**at p. 217 of AIR**).

"This power of superintendence conferred by Art. 227is. As pointed out by Harries C.J., in **Dalmia Jain Airways Ltd. V. Sukumar Mukherjee AIR 1951 Cal 193 (SB)** to be exercised most sparingly and only in appropriate cases in order to keep to Subordinate Courts within the boundary of their authority and not for correcting mere errors."

29. In ***Piper v. Harvey [1958] 1 All E.R. Page 454,*** it has been held as under:

> "I have in mind what this court has said in Coplans v. King (1) [1947] 2 All E.R. 393] to the effect that the decision of the county court judge, when considering the balance of hardship, is to all intents and purposes final. It is not for the Court of Appeal to interfere when there is evidence on which the judge can reasonably come to the conclusion which he did."

Conclusion:

30. The release application was filed in the year 1972. There are twenty six family members residing. The children are grown-up and they require separate accommodation. The village property and agricultural farming is not the sole criteria. There must be some sufficient residential premises for the grown up children for accommodating themselves along with their family members.

31. In view of the above, I find no merit in the writ petition and the same deserves to be dismissed. However, counsel for the petitioner prays for some time to vacate the premises in dispute. Therefore, taking into consideration, his prayer, time is allowed for two months after receipt of the certified copy of the order for vacating the premises provided petitioner furnishes undertaking within 15 days from obtaining certified copy of the order and on failure of the aforesaid conditions, respondents-landlords shall have liberty to file their eviction application.

32. Consequently, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

02.08.2006
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